1942

File No. O Local Bds/42

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LEGAL DEPARTMENT

A BRANCH

Subject:—

Opinions under the

Bombay Local Boards Act, 1923

P.39/E

CONTENTS

Legal Department File No. O. Local Boards/1942.

Sr. No.	Compilation No.	Subject	Pages
	O. Local Boards /1942.	Opinion under the Bombay Local Board Act, 1923.	
1.	B.I.No.11682 16/12/41 O.N. 51 6/1/1942.	The Direction regarding the payment of the expense etc. by the local board to issue by the Collector simultaneously with the provisions for execution of the work etc.----	1-3
2.	O.N. 330 13/1/1942	of Triennial election D.L.B. West-Khandesh. Dates for the various stages of the election, result of notifying dates in the notification.	5-10
3.	O.N. 1338 14/2/1942.	Control over the vaccination establishment in the districts.	11-12
4.	O.N. 1979 5-3-1942.	Whether the Engineer of D.L.B. who holds permanent advance, can open account with a bank with such money.	13
5.	O.N. 2180 11-3-1942	General authority of a Local body to acquire and hold property should be constructed to authorise acquisition.	15-16.
6.	O.N. 2418 18-3-1942.	Whether an obligatory duty of a district local board to pay grants-in-aid to municipalities for the maintenance of dispensaries.	17-18
7.	O.N. 3386 20-4-1942.	Section 47. Authorised acquisition by a Board of defaulter's property in satisfaction of money claims. Fees for giving R.L.A's opinion.	19-20
8.	O.N. 3362 18-4-1942.	Whether a grant can be made to villagers for the up-keep & maintenance of Cart-tracks.	21.

19/5/56
D&K
19-5-56.

Sr. No.	Compilation No.	Subject	Pages.
9.	O.N. 3610 28-4-1942.	Permission for laying water mains & tramway on Thana-Kolshet road.---	23-24.
10.	O.N. 6349 4-8-1942.	Whether refusal of D.L.B., Ahmednagar, for provision for a burial ground in a village amounts to 'default'	25-26.
11.	O.N. 7820. 26-8-1942	Section 133(h) Appointment of Chief Officer without calling for application by advertisement by D.L.B., West-Khandesh.	27-32.
12	O.N. 452 Confl. 17-10-1942.	Whether resolution passed by D.L.B., B.S.D. affords sufficient justification for action under rule 38 B. Defence of India Rules.	33-34.
13	O.N. 8552 21-10-42.	Section 38. Whether a Local Board is competent to appoint more than one works Committe for the whole district for supervision of its work.	35.
14	O.N. 6929 26-8-1942	Section 123 Regulation authorizing grant of loans to those of D.L.B.,Surat, employees who deputed to undergo a course of training at the Local Self-Govt. Institute, Bombay Province.	37.
15.	O.N. 10359 29-12-1942.	Section 75. Employees of the trust-property are no-doubt paid from trust-fund fxorms part of Local-fund.	39.

JPE.
4/5/56
4(c)

2. In R.L.A's No.10347,dated the 2nd December 1941, G.D. was advised that normally the direction under sec. 126(1) of the Bombay Local Boards Act, 1923 regarding the payment of the expense etc. by a local board should be issued by the Collector simultaneously with (or at any rate within a reasonable period thereafter but so as to form part of the same transaction as) the provisions for execution of the work etc. The D.S.,G.D. now states that their difficulty is that on the outbreak of an emergency it is not often possible to say whether the whole of the expenditure can be reasonably expected to be borne by the local body concerned. Before deciding whether the whole or any specified portion of the expenditure should be borne by the local body, it will be necessary to make enquiries into the financial condition of the board and this will take time. To obviate this difficulry it is suggested that the Collr may specify in the order under sec.126 that the expense of executing the work, or such part of it as may be determined by him shall, on such determination be forthwith paid by the local board. It is proposed to incorporate this suggestion in a circular. The R.L.A. has been requested to state whether the draft circular (p.7ante) is free from legal objection.

3. The direction at "A" above would it appears substantially comply with the reuirements of sec. 126 (1) that the direction regarding the payment of expense etc. by the local board should be issued simultaneously

with the provision for execution of work. It appears that an order under sec.126(1) can be couched in general terms as proposed and the exact portion of the expenses to be paid by the district local board can be left to be determined later on.

4. The papers may be seen and returned with the remark that "there is no legal objection to issuing instruction as in the draft circular.

Office of the R.L.A.

Seen and returned.

2. The draft Circular at pages 7-8 (retyped copies at pages 9-12) ante is free from objection from the legal point of view.

O.C.

Id/- P. N. M.
Remembrancer of Legal Affairs.

U.R. to G.D., No. 59 , dated the 6th January 1942.

JPE
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Office of the R.L.A.

A notice of the triennial election of the District School Board, West Khandesh, for the period commencing from 1st June 1941 was published on 30th September 1941 by the President, District Local Board. The dates for the various stages of the elections were also notified in the notificatio As a result, nomination papers for all seats from the intending candidates were received, scrutinised and declared valid by the President, District Local Board on 18th October 1941. About 56 candidates were duly nominated for all the 14seats and the election i.e. the recording counting of votes and the declaration of the result was fixed for 3rd November 1941 at 1 p.m. onwards. On 3rd November 1941 the President, Distri Local Board, West Khandest as Returning Officer sent a written notice through the Chief Officer adjourning the election proceedings to 8a.m. on the next day on the ground that he was indisposed. On the next day i.e. on 4th November 1941 the President informed the members present that he had received from two members a written objection to his adjournment notice dated 3rd November 1941. He also intimated that he had found the objection valid and would not therefore proceed with the election on that day. He accordingly ordered issue of a fresh notice, the publication of a fresh date of election and the invitation of fresh nomination papers. Thereupon certain persons who had already been duly nominated for the election lodged a protest with the Collector, West Khandesh who after due enquiry passed the following order on 22nd November 1941:-

"As the order dated 4th November 1941 of the Returning Officer and the President District Local Board, West Khandesh, directing the postponement of the District School Board election fixed for 3rd November 1941 and the issue of notice for fresh election and inviting fresh nomination papers is arbitrary, ultra vires, and is likely to cause injury and annoyance to the public; therefore in exercise of the powers vested in him under section 125(1) of the Distric Local

Boards Act the Collector, West Khandesh, prohibits the execution of the President, District Local Board and Returning Officer's said order".

The Commissioner, Central Division has confirmed the Collector's order under section 125(2) of the Bombay Local Boards Act. The effect of the Collector's order is that the Returning Officer will now have to fix another date for recording of votes. The Collector suggests that the President and Returning Officer should be directed to fix a suitable date for holding the election with the valid nominations already received. The Commissioner, Central Division proposes to take action as suggested by the Collector.

The following questions are accordingly raised for consideration of the Remembrancer of Legal Affairs :-

(a) Was the action of the President postponing the meeting from 3rd November 1941 to 4th November 1941 Legal?

(b)Could the meeting held on 4th November 1941 legally have proceeded to the business of recording of votes?

(c) Could the meeting have been held on 3rd November 1941 -

(i) in the absence of the President,
(ii) in spite of the President having adjourned it?

(d) Was the action of the President in issuing notice for fresh nomination and election legal?

(e) If the answer to (d) is in the negative, what powers have Government or the local officers in the matter ?

(f) (i) Whether the Commissioner's order can be left alone until its legality is challenged by the President or the Local Board, and (ii) whether it is open to the Commissioner to issue a direction to the President and Returning Officer to fix a suitable date for holding the election with the valid nominations already received.

Questions Nos. (a) and (c). Under rule 1 of the Rules in Schedule C to the Primary Education Rules the President of the local authority is given the power to fix the date for the election of (1) the members of the school board representing special interests and (2) the remaining members

of the school board. The President of the local authority is the returning officer (see rule 3) and as returning officer has to preside at the place fixed for recording of votes (see rule 14(2)). The rules in Schedule C do not contain any provision empowering the returning officer to appoint or depute any one else to preside at the place for recording of votes in case of his enforced absence due to illness or other cause, nor do they contain any provision authorizing him to adjourn the polling in such a circumstance without giving statutory notice. The President of the local authority as a returning officer and a presiding officer, is a persona designata (see R.L.A's opinion No. Munis, Dist. 4/30, dated 19th March 1930) and his presidentship appears to be an integral part of the machinery for the election (cf. Trimbak v. Vishny, 38 B.L.R. 1314). Consequently in the absence of the President, District Local Board, West Khandesh, it was not competent for the members assembled on 3rd November 1941 to proceed with the election. The contrary view expressed by the District Government Pleader, West Khandesh, in his opinion at p.15 ante on this point is not correct. As already observed, the President of the local authority as returning officer is empowered under the rules to fix a date for polling and if in consequence of some cause beyond his control the election cannot be held on the date fixed, it would be competent for him to fix another date after giving due notice (see R.L.A. opinions No. 3114, dated 28th March 1940 and No. 2980, dated 5th June 1933). Under rule 2 of the Rules in Schedule C to the Primary Education Rules the President is required to give a written notice of election at least four weeks before the date fixed for recording of votes. The order of the President in the present case adjourning the polling at short notice to the next day i.e. 4th November 1941 was not therefore strictly legal. Consequently the replies to questions (a) and (c) are in the negative.

Question (b). - As stated above the adjournment of the polling to 4th November 1941 was not strictly legal. That being so, any meeting held on 4th November 1941 could not have legally proceeded to the business of recording votes. The reply to the question is therefore in the negative.

Question (d). - In his opinion No. 2980, dated the 5th June 1933 relating to a similar case of Municipal election the Remembrancer of Legal Affairs observed: "If the rules had permitted the Collector to fix different dates for different stages of election, while allowing certain minimum interval between the different dates, then it would have been possible for the Collector to change only the last date fixed for election, without changing the dates for the nomination of candidates". Rules 1 and 2 of the Rules in Schedule C to the Primary Education Rules permit the President of the local authority to fix different dates for different stages of the election while allowing certain interval between the different dates. Consequently the action of the President in issuing notice for fresh nominations and election in the present case was not strictly legal. It would be competant for the President to fix a fresh date of polling (except in the case of Municipalities which are non-local authorities and which have already recorded their votes on the due date) after giving four week's written notice under rule 2 and it would not be proper for him to follow the election procedure de novo call upon the candidates to submit fresh nominations. (See R.L.A's opinion No. 3114, dated 28th March 1940).

Questions (e) and (f). - A local board exercising the powers and performing the duties under the Primary Education Act, 1923, functions not as a local board but as a local authority for purposes of the Primary Education Act. The Primary Education Act is an enactment sui generis in character and the powers exercised and duties performed by a local board qua a local authority under that Act are exercised and performed under that Act and not under the Bombay Local Boards Act (See R.L.A.'s opinions No. 4410, dated 9th

August 1934: No. 135 (Confl). dated 2nd July 1937; No 295 (Confl), dated 29th November 1940 and No. 1213, dated 7th February 1941). The same analogy will hold good in the case of the President of the local authority as a persona designata exercising the powers vested in him under the Primary Education Act. Consequently while exercising such powers he cannot be said to be doing so as President of the local board. His action in exercise of such power xx cannot be an action either of the local board under section 125 of the Bombay Local Boards Act, 1923 or of the school board under section 16C (1) of the Bombay Primary Education Act, 1923. There is no power vesting in Government either under the Bombay Primary Education Act or the Rules thereunder to control any arbitrary exercise of powers by the President of the local authority in matters relating to the election of the school board. Consequently as matters stand at present if the President of the local authority commits any irregularity or illegality in the holding of elections the only course for the aggrieved party would be to seek relief in a court of law or to contest the validity of the election when held before District Judge and no binding direction can be issued to such President either by the Collector or the Commissioner. The order passed by the Collector in the present case under section 125(1) of the Bombay District Local Boards Act, 1923 suspending the orders of the orders of the President of the local authority dated 3rd November 1941 and 4th November 1941 does not therefore appear to be legal. Government may therefore set aside that order of the Collector and may, if it so desires, further bring it nto the notice of the President of the local authority that it would be advisable to proceed with the election after giving a written notice under rule 2 without going through the whole programme de novo. In case however, the President does not agree, he would have to be left to pursue his own course of action so that the matter may be decided in a court of law

and when it may be challenged by any interest or aggrieved party.

O.C.

Remembrancer of Legal Affairs.

U.R. to E.D., No. 330 dated the 13th January, 1942.

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4(c)

Office of the R.L.A.

Under the Local boards and Municipal Acts it is an obligatory duty of local authorities to make adequate provisio for public vaccination so far as the funds at their disposal will allow (section 50(e) of the Bombay Local Boards Act, 1923, section 54(m) of the Bombay District Municipal Act, 1901, and section 68(m) of the Bombay Municipal Boroughs Act, 1925). It is true that under an existing arrangement between Government and the local authorities, Government has retained control over the vaccination establishment in the districts classed as Non-selected, the local authorities being made liable to pay a fixed share of the expenditure of that establishment subject to a proportionate variation in the event of the strength of the establishment being increased or reduced. This arrangement does not in any way diminish the statutory liability of the local authorities to make adequate provision for public vaccination. It merely constitutes a mode by which the local authority is assisted in the discharge of its obligatory duty in this particular behalf. The question whether the provision made by a local authority in respect of the discharge of its obligatory duty is or is not reasonable or adequate in all circumstances of the case including the extent of the funds at its disposal must always be one of fact required to be determined by Government in each particular case. If in a Non-selected district the local authority refuses or is unable to agree to provide the necessary extra contributi for the additional staff the absence of provision for which, in the opinion of Government, taking action under the relevant control section of the Local Board or Municipal Act. In the alternative Government could either terminate the existing arrangement and require the local authority to discharge its statutory duty in regard to public vaccination or continue the existing arrangment and adjust the additional

would in fact constitute default in the discharge of an obligatory duty, there would be no legal objection on the part of Government.

staff by deductions from the voluntary or ex gratia grants payable to that authority.

O.C.

Id/- P. N. M.
Remembrancer of Legal Affairs.

U.R. to G.D., No. 1336, dated the 14th February 1942.

JPE
4/5/56
4(c)

Office of the R.L.A.

The question for consideration of the Remembrancer of Legal Affairs is whether the Engineer of a District Local Board who holds a permanent advance under rule 23 of the Bombay Local Boards Account Code, 1935, can open an account with a bank with such money.

2. Rule 23 of the Bombay Local Boards Account Code, 1935, provides that the holder of a permanent advance shall be responsible for the safe custody of the money placed in his hands and he shall at all times be ready to account for it by producing the relevant vouchers or cash or both. If the holder of a permanent advance is reasponsible for the safe custody of such money, it would be entirely within his own discretion to decide which custody would be safe. A bank is ordinarily presumed to be a safe place for depositing such money and there can be no legal objection to his opening a separate account for the purpose with a bank. Section 82 of the Bombay Local Boards Act, 1923, prescribes the procedure for drawing against the local fund presumably standing in the name of the board and can have no application to drawing against the entirely seperate deposit made with a bank of the whole or a portion of the advance held by an officer under rule 23. The view expressed in the General Department office note at page 15/ante is correct.

O.C.

Id/- P. M. M.
Remembrancer of Legal Affairs.

U.R.F to G.D., No. 1976, dated the 5th March 1942.

Jrs
4/5/56
4 (c)

Office of the R.L.A.

In the light of the special circumstances of the case I feel that there is some force in the contentions urged on behalf of the District Local Board, Ratnagiri and it seems to me that the previous opinion of the R.L.A. (Mr. J.R.Dhurandhar) in No. 178 dated 5th January 1940 requires some modification.

2. It is true that in the absence of powers expressly granted by the statute, the general authority of a local body should be construed to authorise acquisition and holding of property to acquire and hold property for purposes authorised by the Act and not for speculation or profit (See Aiyangar's Law of Municipal Corporations p.236). Ordinarily a cor. ratio cannant become purchaser of any distrained property unless permitted by the consitituting Statute. But in the present case the facts are perculiar. The District Local Board, Ratnagiri is unable to recover its ferry dues by reason of no bidder coming forward to bid for the defaulter's property. Section 47 of the Bombay Local Boards Act, 1923, lays down inter alia that it shall be competent to the local board to acquire and hold property both moveable and immovable, to lease, sell or otherwise transfer such property and to contract and to do all other things necessary for the of the Act. In the present case the sole object of the District Local Board, Ratnagiri is to bid for and purchase the defaulter's property in order to recover its ferry dues which otherwise would have to written off. Since the recovery of the ferry dues is primarily for the benefit of the District Local Boards, Ratnagiri, it will not be unreasonable to hold that the recovery of the dues by purchase of defaulter's property is legitimate purpose of the Act. It appears that if bids on behalf of the Local Board become necessary to facilitate such recovery, in making such bids the board will be acting within the scope of its own legitimate functions and power The acquisition of property by the District Local Board in such cases cannot reasonably be said

to be for " Speculation or profit." In this view of the matter, therefore, there appears to be no objection to permitting the District Local Ratnagiri, to offer its bids in the same mahner as Government do in the case of recoveries under section 155 of the Bombay Land Revenue Code, 1879 (cf. Government Resolution, Finance Department No, 4686 dated 19th July 1926)

O.C.

Id/- P. N. M.
Remembrancer of Legal Affairs.

U.R. to G.D., No 2180, dated the 11th March 1942.

JPE.
4/5/56
4 (c).

Office of the R.L.A.

The question raised for the cosideration of Remembrancer of Legal Affairs are:-

(1) Whether it is an obligatory duty of a district local borad to pay grants-in-aid to municipalities within the district for the maintenance of dispensaries within the municipal area; and

(2) Whether under the Rules for the Regulation of Government-Aided Charitable Dispensaries, 1928, it is open to a municipality which gets Government grant-in-aid to refuse to treat patients coming from outside the municipal area.

2. Question No.(1). - Section 77 of the Bombay Local Boards Act, 1923, provides that expenditure by the local boards out of the local fund shall save as otherwise provided by this Act be made within the areas respectively subject to their authority only, but may, where it does not exceed rupees two hundred with the sanction of the Collector and where it exceeds rupees two hundred with the sanction of the Commissioner be made outside that area for any of the purposes of the Act. Municipal areas are not subject to the authority of local boards (see section 4(3) of the Act). Consequently any expenditure out of the local fund within the municipal area would be purely discretionary.

3. Question No. (2)- The Rules for the Regulation of Government-Aided Charitable Dispensaries, 1928, do not give the local body any power to discriminate on the score of residence (see R.L.A's opinion No. 866, dated the 30th January 1941). But if any discrimination is made on the score of residence, as for instance refusal of admission for treatment in the State-aided dispensaries by municipalities of patients from outside the municipal area, it would be competent to Government to reduce or altogether discontinue any grant-in-aid to such Municipalities.

O.C.

Id/- P. N. M.

Remembrancer of Legal Affairs. 17/3

U.R. to the G.D., No. 2418 dated the 18th March 1942.

Submitted.

The G.D. papers disclose that on 18-11--1939 the Commissioner, S.D. on his own initiative raised the question for the consideration of Govt. Whether section 47 of Bombay Local Boards Act, 1923, authorised acquisition by a Board of defaulter's property in satisfaction of money claims. There is nothing in the papers to show that there was even a remote suggestion on the part of the District Local Board, Ratnagiri, to obtain opinion of the R.L.A. A copy of R.L.As' opinion No. 178 dated 5-1-40 was forwarded by Govt. to the Commissioner, S.D. for the Commissioner's information.

p.1 of G.D. file S. 172/1940.

p.5 -do-

xvide p.17 -do-

2. From the letter of the President D.L.B., Ratnagiri, dated 9-10-41, it appears that substance of the said of opinion of the R.L.A. was communicated to the D.L.B. Ratnagiri. From para 4 of resolution No. 88 dated 30-5-40, passed by the D.L.B. Ratnagiri, it appears that the Board did not accept the view expressed by the R.L.A. and desired that the question should be sent to Govt. for reconsideration. It is no doubt tru that in his letter dated 9-10-41 the President requested the Collector to refer the question to the R.L.A. for reconsideration, but this was because the matter was once considered by the R.L.A. A/The previous opinion of 1940 was not given on the application of the Board in that behalf (vide rule 21(1) L.O.Rules) and merely because that opinion has now been revised at the instance of the D.L.B., it would hardly be fair or proper to charge fees [~~(to the D.L.B.)~~] for the revised opinion. /A

A — A. To be the reply

2d PNMOOS

JPE 6/5/56. 4(c). 17-4-42

U.O.R to G.D. No. 3386 dt. 26-4-1942

Office of the R.L.A.

Under clause (n) of section 50 of the Bombay Locale Boards Act, 1923, local boards may at their discretion provide out of the local fund for any other local works or measures likely to promote the health, safety, comfort or convenience of the public. Village roads which are not constructed by a local board are not roads vesting in it within the meaning of clause (a) of section 50, nor are such roads covered by any of the clauses (b) to (mm) of section 50. These roads are likely to promote the convenience of the public. It would, therfore, be competent for a local board to make grants under clause (n) of section 50 to the villages for the construction and maintenance of village roads (cf. R.L.A.'s opinion No. 2433, dated the 14th October 1919).

O./C.

Id/- P. M. M.
Remembrancer of Legal Affairs.

U.R. to G.D., No. 3352 dated the 18th day of April 1942.

JPE 5/5/56
4 (e).

Office of the E.L.A.

Till 1931, the Thana-Kolshet Road, being part of the old Bombay-Agra Road, was a provincial road, and consequently Government was competent to grant permission for laying water mains and tramway on the Thana-Kolshet road. In his letter No. G-126/9621, dated 5th December 1931, however, the Superintending Engineer, N.C. after obtaining the requisite consent of the Taluka Local Board, North Salsette, moved Government to accord its sanction to deprovincialise the road in question and to hand it over to the Taluka Board, North Salsette, for maintenance. The proposal to deprovincialise the road and to hand it over to the Taluka Local Board, North Salsette, for maintenance was sanctioned by Government (vide G.R., P.W.D. No. 6219/27. dated 1st February 1932).

2. On the abolition of the Taluka Local Board, North Salsette, under section 38A of the Bombay Local Boards Act, 1923, its rights and liabilities in respect of contracts, agreement and other matters relating to the area subject to its authority vested in the District Local Board under section 131C of the Act. On the analogy of section 50A of the Act, it may presumed that the Taluka Local Board, North Salsette, had agreed to take over the road and maintain it on behalf of the Provincial Government so far as the local fund could permit. Assuming that there is nothing else in writing to show the terms on which the District Local Board took over charge of the road from the Taluka Local Board, it may also be presumed that the District Local Board's position with regard to the road is the same as that of the Taluka Local Board. As the road does not vest in the District Local Board under section 48 of the Bombay Local Boards Act, 1923 and is merely handed over for maintenance, the Board has no proprietory rights either in the surface or in the sub-soil and such rights would remain vested in Government. The view expressed by the Executive Engineer, Thana Division at page 73 ante that the District Local Board, Thana, has no ownership over the road is correct. The District Local Board, Thana, is not, therefore, entitled to payment or the nominal rent charged to

the Bombay Municipality. The Government being the owner of the road will be entitled to payment of the rent. The condition inserted by the Solicitor to Government in the agreement that the amount of rent should be paid to Government in ~~thexxx~~ proper.

O.C. Id/- P. N. M.

Remembrancer of Legal Affairs.

U.R. to P.W.D. No. 3610, dated the 28th April 1942

JPE 5/5/56

Office of the R.L.A.

The question for the R.L.A's consideration is whether refusal on the part of the District Local Board, Ahmednagar, to make provision for a burial ground in a village amounts to 'default' within the meaning of section 127 (1) of the Bombay Local Boards Act, 1923.

2. Clause (e) of section 50 of the Bombay Local Boards Act 1923, provides that itx shall be the duty of Local Boards, so far as the local fund at their disposal will allow, to make adequate provision for the areas respectively subject to their authority in regard to public vaccination, and sanitary works and measures necessary for the public health.

3. Clause (n) of the same section enacts that Local Boards may at their discretion provide out of the local fund for any other local works or measures likely to promote the health, safety, comfort or convencience of the public.

4. Clause (a) to (h) of section 59 come within the field of obligatory duties, while clauses (i) to (O) come within the field of discretionary duties of the Local Boards, The obligatory duties must be undertaxken by the Local Boards only if the local fund at their disposal will allow. The failure to discharge an obligatory duty on the score of want of funds would not Constitute a default, unless Government is satisfied after due enquiry that as ax matter of fact there were sufficient funds for the purpose.

5. The provision of a burial ground in a village where the practice of burial prevails is doubtless a sanitary measure necessary for the public health within the meaning of clause (e) of section 50. But where a burial ground already exists, or where a Local Board has already discharged its obligatory duty of providing a burial ground it is doubful whether its removal to another site more conducive to public health could be said to be a necessary sanitary measure under clause (e) or whether it could be more correctly reckoned merely as one likely to promote the health and conveience of villagers within the meaning of clause (n) Which view it would be correct to take would depend to some extent on the facts of each case but on the whole the R.L.A. is inclined

to the view that it would more appropriately fall under clause (n). The Collector in his report merely says that it is undesirable to have a burial ground in close proximity to the residential area and there is nothing to show that this burial ground is a positive danger to public health. In any event, the decision whether or not the present site of the burial ground in proximity to the residential area is harmful to public health must mainly rest with the District Local Board. Even if its decision be wrong on the point that would not, ordinarily attract the provisions of section 127 of the Act. Since the present case would appear to fall more appropriately under clause (n), the refusal on the part of the Local Board to ~~it~~ provide another site for the burial ground would not constitute a default within the meaning of section 127. So far therefore as the facts of this case are concerned, the view of the D.S., G.D., appears to be correct. But this opinion is not to be taken as authority for the view that in no case would a refusal to provide a burial ground amount to a default. On that general question it is not necessary at present to express on opinion.

Sd/- P. N. M.
3/8

Remembrancer of Legal Affairs.

U.R. to G.D., No. 6349, dated the 4th August 1942.

JPE. 5/5/t
4 (c)

Submitted.

It appears that the District Local Board, West Khandesh, without calling for application by advertisement for the post of the Chief Officer as required by rule (18) of the rules passed by Government under section 133(h) of the Bombay Local Boards Act, 1923, by its resolution No. 17 dated 23rd March 1941 appointed one Mr. Z.B.Patil, B.A.,L.L.B, who possesed the required qualification prescirbed by rule (19) (a) as Chief Officer in the grade of Rs.170 -10-250-E.B.-15-400 p.m. with effect from 3rd May 1941, the date from which the post was going to be vacant. In para. 10 of the Audit Note on the accounts of the D.L.B., West Khandesh, for the year 1940-41, the Examiner, Local Fund Accounts, pointed out that the appointment of the Chief Officer was made without observing the provisions of rules (18) and (19) of the Rules framed by Govt., under section 133 (h) of the Bombay Local Boards Act. 1923 in as much as--

(1) Mr. Z.B.Patil was appointed as Chief Officer without calling for applications by advertisement as required by rule (18) of the Rules framed under section 133(h) of the Bombay Local Boards Act, 1923;and

(2) the resolution passed by the Board on 23rd February 1941 did not specify whether the appointment was made in the first instance on probation for one year as provided by rule 19(2).

2. The President, D.L.B., West Khandesh, contended that since the appointment of the Chief Officer was made under section 119(1) of the Bombay Local Board Act, 1923, and as the subsidy is received by the D.L.B. on the pay of the Engineer and not of the Chief Officer, sanction of Government for appointment of the Chief Officer under section 119(2) was not necessary and consequently the preliminary procedure prescribed by

rule (18) for calling applications by advertisemet for the post of Chief Officer was not necessary. The Examiner, L.F.A., however, disagreed with the President and referred the matter to the Commr. C.D., The Examiner, L.F.A., holds that "though rule (18) o. the Rules framed under section 133(h) of the Act refers to the appointment to the posts of the Chief Officer, Engineer, or Health Officer mentioned in Section 119(2), it may not perhaps be the intention that of Govt. that these important posts should be filled up without inviting applications by advertisement when Govt. grant is not to be claimed on any one of them. It would appear to be the intention that the provision of inviting applications by advertisement for all these important posts is applicable whether the approval of Govt. under section 119(2) is to be obtained or not",

The Commr. C.D. does not share the view expressed by the Examiner, L.F.A. The Commr. is of opinion that from a strict interpretation of sub-sections (1) and (2) of section 119 it would seem that the Board is competent to appoint its Chief Officer under section 119(1) without the sanction of Govt. when no subsidy is claimed on his pay and that section 119(2) relates to those cases in which appointments are required to be approved by Govt. for the purpose of subsidy and that rule (18) is governed by Sect.119(2) and that in other cases the procedure regarding the advertisement of the posts would not be required to be followed when the subsidy on the pay of the Chief Officer is not claimed. The R.L.A. is requested to advise whether the view expressed by the Commr.C.D. in para. 3 of his letter No.LB.D./W.K.-5/235 dated 29th July 1942 is correct.

3. On the above facts, the questions for the R.L.A.'s consideration are:-

1). Whether a Distric Local Board ~~is~~ is competent to appoint its Chief Officer under sub-sett. (1) of section 119 of the Bombay Local Boards Act, 1923 without the sanctions of the Govt. when no subsid is claimed on his pay; (2). Whether sub-section (2) of sec. 119 relates to those cases in which appointments are required to be approved by Government for the purpose of subsidy; 3). Whether rule (18) of the rules passed by Govt. under section 133(h) of the Bom. LocalBoards Act, 1923, is governed by section 119(2) and if so whether in other cases the procedure regarding the advertisement of the post of Chief Officer would not be required to be followed when the subsidy on the pay of the Chief Officer is not claimed.

4. As regards question (1) and (2) sub-sec. (1) of section 119 of the Bombay Local Boards Act, 1923 provides that every district Local board may appoint and pay such officers and servants as it shall deem necessary and proper to maintain for the efficient execution of its duties and the duties of the taluka local boards in the district under this Act, and shall from time to time prepare and sanction and schedule of the staff to be so maintained setting forth the designations and grades of different officers and servants, their respective duties and the amount and nature of their salaries, fees and allowances to be paid to each, and determining which of the said officers and

servants are to be maintanined permanently and which temporarily only. Under sect. 119(1), therefore, it is open to a district local board to have as many officers and servants as it considers necessary and proper to maintain for the efficient execution of its duties bgt every such post must be included in the Schedule prepared by the D.L.B. (v

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(See Opinion No. 3714 dated 29th July 1932). Before a district local boards proceeds to make an appointment of a Chief Officer or an Engineer

such Chief Officer or Engineer. The words "scuh appointment is approved by Govt. " Convey that it is within the discretion of the Provincial Govt. to accord its approval to the appointment of a Chief Officer or an Engineer, as the case may be. Under Sect. 119(2) it not only approves an appointment When Govt. approves an appointment of an individual but also the scale of pay attached to that post. Consequently if the local board intend to appoint another person or to change the scale of pay approval of Govt. will be necessary. (vide R.L.A.'s No.10.Local Boards 30/29 dated 12th July 1930). The combined effect of sub-sects (1) and (2) of sect. 119 is that a local board may or may not approach Govt. for its approval to appointment of a Chief Officer or an Engineer made by a local board. If the local board has not approched Govt. or if the appointment made by the D.L.B. is not approved under sub-section (2), Govt, would not be liable to pay two-thirds of the salary of such officer and the financial burden for maintaining such officer would fall upon the local board. Section 119 relates to those cases of appointments of C.O's or Engineers in which as a result of the approval accorded by Govt. It is bound to subside the local board to the extent of 2/3rd of

the salary attached to the post.

5. As regards the third question, rule (18) of the Rules framed by Govt. under section 133(h) of the Bom.Local Boards Act., 1923, provides that no permanent appointment under section 119(2) of the Act, to the post of Chief Officer, Engineer or Health Officer shall be made (except in cases when the loan of a suitable officer from Govt. service is secured or when a suitable retired Govt. Officer is available) until applications have been called for by advertisements and until atleast two mohths have elapsed from the date of the first of such advertisements. The words "appointment under sub-sect.(2) of sect. 119 of the Act make it clear that the preliminary procedure inviting application for the post C.O.etc. is intended to be followed in respect of the appointments of C.O. or Engineer in whose case approval of Govt. is intended to be obtained. "If there is nothing to modify, nothing to alter, nothing to qualify, the language which the statutue contains, it must be construed in the ordinary and natural meaning of the words and sentences" (pp.2 to 3 of Maxwell on Interpretation of Statutes). "The underlying principle is that the meaning and intention of a statute must be collected from the plain and unambiguous expressions used therein rather than from any notions which may entertained by the Court as to what is just or expedient. The words cannot be constued, contrary to their meaning, as embracing or excluding cases merely because no good reason appears why they should be excluded or embraced. However, unjust, arbitrary or inconvenient the meaning conveyed may be, it must receive its full effect." (ibid p.4). As a general proposition of law, the rule raid down by Law Halsbury in Leader V. Duffey(1888) 13 A.C. 294 at 301) for construction of wills applies a

fortiori to the construction of statues. Consequently "whatever the instrument, it must receive a construction according to the plain meaning of the words and sentences therein contained and it is arguing in a vicious circle to begin by assuming an intention apart from the language of the instrument itself, and having made that fallacious assumption, to bend the language in favour of the assumption so made" (Ibid p. 6) . The view expressed by the Examiner L.F.A. that it may not perhaps be the intention of Govt. that these important posts should be filled up without inviting applications by advertisement when Govt. grant is not to be claimed on any one of them" does not appear to be correct. Had that been the intention, for the words "under sub-sect.(2) of section 119 of the Act" the words" under section 119 of the Act" would have been used in rule (18)". A case not provided for in a statute is not to be dealt with merely because there seems no good reason why it should have been omitted, and the omission appears consequently to have been unintentional (p.13 of Maxwell). In view of the clear working of the rule (18), the argument of Examiner of L.F.A cannot be supported. The view of the above dicussion the view expressed by the Commr. C.D. in para.3 of his letter appars to be correct.

Id/- E.P.Bhamgara.
27/8

JPE 5/5/56.
4 (a)

Office of the R.L.A.

The first question for the consideration of the R.L.A. is whether the resolution passed by the District Local Board, Bombay Suburban District on 15.8.1942 at page 7 ante affords sufficient justification for action under rule 38B of the Defence of India Rules.

2. Rule 38B of the Defence of India Rules inter alia provides that if in the opinion of the provincial Government any local authority has passed any resolution approving of or supporting any activity prejudicial to the defence of British India, the public safety, the maintenance of public order, the efficient prosecution of war or the maintenance of supplies and services essential to the life of the community, the Provincial Government may by order supersede the local authority for such period as may be specified in the order. By its resolution dated 15.8.1942 the District Local Board, Bombay Suburban District disapproves of the action of Government in arresting Mr. Gandhi and other political leaders and earnestly requests Government to open negotiations with Mr. Gandhi for resolving the present political dead-lock and establishing a national Government. Disapproval of the arrest of Mr.Gandhi and other political leaders does not mean approval of any prejudicial activity within the meaning of rule 38B. Consequently it would not be lawful for Government to supersede the District Local Board, Bombay Suburban District, under rule 38B.

3. The next question for consideration is whether action can be taken against the District Local Board, Bombay Suburban District under section 129(1) of the Bombay Local Boards Act, 1923 for failure to elect a president at its meeting convened by the Collector under sub-section (3) of section 26.

4. Sub-section (1) of section 129 of the Bombay Local Boards Act, 1923, provides that if in the opinion of the Provincial Government a local board is not competent to perform or persistently makes default in the performance of the duties imposed on it by or under this Act, or otherwise by law, or exceeds or abuses its powers, the Provincial Government may by an order published, with the reasons for making it,

in the official Gazette declare the local board to be incompetent or in default or to have exceeded or abused its powers, as the case may be, and either (a) dissolve the board or (b) supersede it for a period to be specified in the order. "Competent" means capable, legally qualified as competent Court; fitness or capability of performing the duties of office" (See Iyer's Law Lexicon, p.218) It is true that a district local board acts through its president and it is therefore obligatory on the board to elect its president (see Section 22(1) of the Act). And the District Local Board, Bombay Suburban District at its meeting convened by the Collector under section 26(3) should have proceeded to elect first a chairman for the meeting and then its president. It failed to do either. But its failure was not due to its incompetency or incapacity, for it was competent enough to elect its president if it so desired. The Board's failure to proceed with the meeting amounts to a default in the performance of its duty and does not arise from its incompetency. Default in performance of duties would not justify either dissolution or supersession of the board unless such default is persistently made. The District Local Board, Bombay Suburban District cannot therefore be said to have persistently defaulted in the performance of its duty to elect its president when it has declined only once to do so. Consequently it would not be competent for Government to take action against the District Local Board, Bombay Suburban District under section 129(1). R.L.A.'s opinion No.274-Confl., dated 8.11.1940 quoted in G.D. office note has no application to the present case.

5. The view taken by Deputy Secretary, General Department on both points is correct.

Sd/- P. N. M.
17/10
Remembrancer of Legal Affairs.

U.R. to G.D., No.452-Confl., dated the17ths October 1942.

JPE. 7/5/56. 4c.

...ice of the R.L.A.

The question for the consideration of the R.L.A. is whether under section 38 of the Bombay Local Boards Act, 1923 a local board is competent to appoint more than one works committee for the whole district for supervision of its works.

2. Sub-section (1) of section 38 of the Bombay Local Boards Act, 1923 provides that a local board may appoint committees consisting of such members as the local board may decide or any member or honorary or stipendiary officer of the board to exercise the powers and perform the duties of the local board in respect of any purpose subject to any limitations and provisions contained in rules made under section 113(c) or regulations made under section 35(1). The committees appointed under that provision are executive committees. A committee appointed for supervision of works of a local board is an executive committee. There is nothing in sub-section (1) of section 38 precluding a local board from appointing more than one works committe for the district. Consequently if a local board finds it necessary in the interests of efficient administration to appoint more than one works committee i.e. one for each division in the district or one for each taluka or a group of talukas, it would be competent to do so (cr. R.L.A.'s opinion No.4972 dated 4th May 1939). Rule 10(1) of the Bombay Local Boards Travelling Allowances Rules, 1936 appears however to suggest that only one works committe can be appointed by a local board; but such provision can hardly take away the power of a local board to appoint more than one works committe under section 38(1). If a local board appoints more than one works committe for the district the form of R rule 10(1) of the Bombay Local Boards Travelling Allowance Rules is likely to continue to give rise to audit objection until it is amended.

Sd/- P. N. M.
21/10
Remembrancer of Legal Affairs.

U.R. to G.D. No. 8552, dated the 21st October 1942.

JPS--7/5/56--4c.

Office of the R.L.A.

The District Local Board, Surat proposes to frame a regulation under section 123 of the District Local Boards Act authorising the grant of loans to those of its employees who are deputed to undergo a course of training at the Local Self-Govt. Institute, Bombay Province. The Examiner, Local Funds Accounts is of the opinion that though no section of the Act expressly permits such loans, it may be possible to bring such loans within the purview of section 119(1). The Remembrancer of Legal Affairs is requested to advise whether the proposed regulation is legally in order.

The attention of the General Department is invited to the Remembrancer of Legal Affairs' opinion No.7224, dated the 13th December 1935 where a similar question has been considered. Regulation No.3 of the Regulations proposed by the District Local Board, Surat will not be intra vires of either the provisions of section 119(1) or those of clauses (b) and (c) of section 123 of the Bombay Local Boards Act, 1923. The grant of a loan to pay study fees cannot be included within the meaning of "allowance" in clause (c) of section 123. And even assuming that the privilege of obtaining such loans could be regarded as a condition of service, neither section 119 nor section 123 gives power to the Board to make the grant of such loans a condition of service. Training of employees of a local board at the Local Self Government Institute may however be regarded as a matter connected with the administration of the Act within the meaning of clause (h) of section 133. Consequently if a rule or regulation is required, the only course feasible appears to be for Government to make a rule for the purpose under clause (h) of section 133.

Sd/- R. M. M.
24/8/

U.R. to G.D.,No.6929, dated the 26th August 1942.

JPE. 7/5/56. 4c.

Office of the B.L.A.

Any grant or donation received by a district local board though strictly speaking it forms part of the local fund, is required to be applied exclusively to the special purpose for which the same was received (see the third proviso to section 75 of the local Boards Act, 1923). Consequently the servants employed by the Ahmedabad Local Board in connection with the management of the Rewabai Bhaishankar Solicitor Hindu Dharamshala will have to be paid out of the trust fund. The trust deed under which the settlor Bhaishankar delivered possession of the Dharamshala to the local board for management empowers the Board to frame rules and regulations for the management and control of the trust property. Section 123 of the Bombay Local Boards Act, 1923 does not prohibit the making of different sets of rules for different classes of employees. It appears from the letter of the President, District Local Board at page 11 ante that the qualifications of the staff employed for the management of the Dharamshala are not the same as those of the others employees of the local board and leave and other concessions are not also available to them. These employees are to be paid out of the trust fund. In the circumstance it appears that there would be no legal objection to the District Local Board framing separate rules in exercise of powers, vested in it under the trust deed read with section 2123 of the Bombay Local Boards Act, 1923.

Sd/- P. N. M.
29/12
Remembrancer of Legal Affairs.

U.R. to G.D., No. 10359, dated the 29th December 1942.

JPE 7/5/56. 4c.

SMC 19/5/56

DGK 19-5-56.